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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,370	12/21/2001	Jeffrey A. Trogolo	A-036	5277

7590 03/18/2009
AGION TECHNOLOGIES
60 Audubon Road
Wakefield, MA 01880

EXAMINER

EBRAHIM, NABILA G

ART UNIT	PAPER NUMBER
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1618

MAIL DATE	DELIVERY MODE
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03/18/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10032370	12/21/2001	TROGOLO ET AL.	A-036

AGION TECHNOLOGIES
60 Audubon Road
Wakefield, MA 01880

EXAMINER

Nabila G. Ebrahim

ART UNIT	PAPER
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1618	20090315
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DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

1. The timely submission under 37 CFR 1.129(a) filed on 10/13/2008 is not fully responsive to the prior Office action because Applicant has not responded to the election/restriction requirement dated 10/28/2008 which was sent to applicant after a Request for Continued Examination. Since the submission appears to be a *bona fide* attempt to provide a complete reply to the prior Office action, applicant is given a shortened statutory period of ONE MONTH or THIRTY DAYS from the mailing date of this letter, whichever is longer, to submit a complete reply. This shortened statutory period supersedes the time period set in the prior Office action. This time period may be extended pursuant to 37 CFR 1.136(a). If a notice of appeal and the fee set forth in 37 CFR 1.17(e) were filed prior to or with the payment of the fee set forth in 37 CFR 1.17(r), the payment of the fee set forth in 37 CFR 1.17(r) by applicant is construed as a request to dismiss the appeal and to continue prosecution under 37 CFR 1.129(a). The appeal stands dismissed.

Applicant argues that there should not be search burden on the Examiner after the long period of prosecution. However, it is noted that the search system and the focus of the invention are completely different, requiring an undue burden on the patent examiner. While searches may seem to be overlapping, however, extensive since the patent examiner searches the databases mostly literally. Rarely do applicants present claims to an inventions where the distinctness of the invention are readily clear such as a chemical compound and a gene sequence. It is the responsibility of the examiner to enforce 35 USC 101, which allows the applicant to obtain a patent for a single invention. In the opinion of the examiner the applicants present two distinct inventions.

It is noted that the restriction requirement is necessitated by amendment filed June 21, 2007 in an Request of Continuing Examination, second sentence states: "if the distinctness and independence of the invention is clear, such requirement will be made before any action upon the merits however, it may be made at any time before final action in the case at the discretion of the examiner. Thus, the instant restriction requirement is considered to be proper in a timely manner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nabila G. Ebrahim whose telephone number is 571-272-8151. The examiner can normally be reached on 8:00AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on 571-272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael G. Hartley/
Supervisory Patent Examiner, Art Unit 1618

/Nabila G Ebrahim/
Examiner, Art Unit 1618

PTO-90C (Rev.04-03)